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10 behalf of other members of the general
public similarly situated

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

13
14 DAVID WEINER, individually, and on
15 behalf of other members of the public
similarly situated,

16 Plaintiff,

17 vs.

18 OCWEN FINANCIAL CORPORATION, a
19 Florida corporation and OCWEN LOAN
SERVICING, LLC, a Delaware limited
20 liability company,

21 Defendants.
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Case Number: 2:14-cv-02597-DJC-DB
CLASS ACTION

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AND DIRECTION OF
NOTICE UNDER FED. R. CIV. P. 23(e)**

Hon. Daniel J. Calabretta

Action Filed: November 5, 2014

PLAINTIFF’S SUPPLEMENTAL BRIEF

In accordance with the Court’s Order dated February 23, 2024 (Dkt. 246), Plaintiff David Weiner, on behalf of himself and class members, respectfully submits this supplemental brief addressing the Court’s request for information concerning the proposed class action settlement with Defendants Ocwen Financial Corporation and Ocwen Loan Servicing, LLC (“Ocwen”).

I. The Gross Settlement Amount and Its Allocation Among Class Members

As detailed in Plaintiff’s Motion for Preliminary Approval (Dkt. 244), this case concerns allegations that Ocwen misled borrowers into believing they were reimbursing Ocwen for the amounts it paid to vendors for property valuation products known as Broker Price Opinions (“BPOs”) and Hybrids Valuations (“Hybrids”) when, in fact, the products included a hidden “reconciliation” service fee.

The parties’ proposed Settlement Agreement does not contain a “gross settlement amount.” Rather, it requires Ocwen to pay *unlimited* claims for reimbursement by class members for BPO and Hybrid fees assessed and paid, *without any cap on the total amount paid to each class member*. Specifically, (1) Nationwide Settlement Class Members can seek reimbursement of \$60 for *each* BPO fee paid and \$70 for *each* Hybrid fee paid during the class period and (2) California Settlement Sub-Class Members who continue to have loans serviced by Ocwen can seek a reversal of \$60 of *each* unpaid BPO fee and \$70 for *each* unpaid Hybrid fee that was assessed by Ocwen during the class period. Importantly, the average alleged mark-up of the BPO and Hybrid fees at issue in the case are \$56 and \$66 respectively, so class members are receiving a reimbursement amount which *exceeds* the average amount of the alleged fee mark-up.

Based on Ocwen’s loan records, the Nationwide Settlement Class can recover up to \$52,895,150 in reimbursements for BPO and Hybrid fees paid, and the California Settlement Sub-Class can recover up to \$931,070 in fee “reversals” for unpaid BPO and Hybrids assessed to their mortgage accounts, for a gross reimbursement settlement amount of **\$53,826,220**.

Additionally, the Settlement Agreement requires Ocwen to implement an important change to its business practices. Within 30 days after entry of a final approval order, Ocwen shall

1 modify its disclosures to borrowers, and in any applicable fee schedules, to identify the
2 “reconciliation” service included in the vendors’ BPO and Hybrid products. Thus, going forward,
3 borrowers will be fully apprised of the nature and scope of the BPO and Hybrid Valuation fees
4 charged by Ocwen.

5 As the Court is aware, this case has been pending for more than 10 years, during which
6 the parties actively engaged in robust and contentious litigation before three different District
7 judges, and trips to the Court of Appeal, as the Court’s docket bears out. Over that decade,
8 different District judges granted class certification, then decertification, then reconsideration, and
9 then class certification again. Moreover, the trial date was continued several times due to the
10 various reassignments of this case and, finally, after months of intensive settlement negotiations
11 between experienced counsel for Plaintiff and Ocwen, and with the able assistance of mediators
12 Hon. Dickran Tevrizian (Ret.) of JAMS and Robert Fairbank, Esq., of Fairbank ADR (on the eve
13 of trial), the parties finally reached this settlement.

14 During the lengthy period while this case was being litigated, a large percentage of class
15 members severed their relationships with Ocwen due to foreclosures and other loan default-
16 related events, as well as loan refinancings due to periods of lower interest rates. Because Ocwen
17 no longer has the ability to send settlement checks directly to these class members, Plaintiff’s
18 counsel negotiated a settlement structure that allows class members a lengthy opportunity -- *a full*
19 *18 months from preliminary approval* -- to come forward and make claims for reimbursement of
20 the fees at issue here. And during the 18-month claims period, the Court-appointed Settlement
21 Administrator will take active steps to locate and provide notice to class members, including via
22 direct mail, email, and publication notice, with repeated outreach efforts being conducted by the
23 Settlement Administrator during the claims period.

24 **II. Size of the National Settlement Class and California Sub-Class**

25 Based on Ocwen’s loan data, there are 322,958 class members in the Nationwide
26 Settlement Class and 7,419 class members in the California Settlement Sub-Class.

1 **III. The Expected Attorneys' Fees and Costs**

2 Under the proposed schedule set forth in preliminary approval papers, Plaintiff's counsel
3 will file their motion for attorneys' fees, expenses, and service awards at least 30 days before the
4 proposed objection/opt-out deadline. The attorney's fee motion will be available on the
5 Settlement website after it is filed, such that class members will have ample opportunity to review
6 and consider the request in their overall evaluation of the proposed Settlement and its terms.

7 As noted in the proposed Class Notice, Class Counsel will request an award of reasonable
8 attorney's fees in the amount of \$8,000,000 and litigation costs of \$900,000. Additionally, the
9 Settlement Administrator has budgeted approximately \$600,000 for administrative costs, which
10 shall be paid by Ocwen.

11 Class Counsel's requested attorneys' fees are based solely on their lodestar incurred in this
12 decade-old, heavily litigated case, and will be requested pursuant to the fee-shifting provisions of
13 Plaintiff's certified RICO and UCL claims. *See* 18 U.S.C. § 1964(c); *Walker v. Countrywide*
14 *Home Loans, Inc.*, 98 Cal.App.4th 1158, 1179 (2002) (authorizing attorney's fees to a prevailing
15 UCL plaintiff pursuant to Code of Civil Procedure section 1021.5.). Lodestar fees are commonly
16 awarded to Class Counsel in class action settlements reached under circumstances like those at
17 issue here.¹ *See, Ontiveros v. Zamora*, No. 2:08-567 WBS DAD, 2014 WL 3057506, at *15
18 (E.D. Cal. July 7, 2014) (noting "the lodestar method is most often applied in class actions
19 brought under fee-shifting statutes or those where the relief obtained is not easily monetized, it
20 may be used in common fund cases as well"); *Bruno v. Quten Rsch. Inst., LLC*, No. SACV 11-
21 00173 DOC EX, 2013 WL 990495, at *3 (C.D. Cal. Mar. 13, 2013) ("the 'lodestar method' is
22 appropriate in class actions brought under fee-shifting statutes" (*quoting In re Bluetooth Headset*
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24 ¹ The Supreme Court has made clear that a Plaintiff can be the "prevailing" party
25 even after a settlement, a trial verdict is not necessary to award fees. *Farrar v.*
26 *Hobby*, 506 U.S. 103, 111 (1992); *Maher v. Gagne*, 448 U.S. 122, 127 (1980); *see*
27 *also Barrios v. California Interscholastic Fed'n*, 277 F.3d 1128, 1134 (9th Cir.
28 2002) ("Under applicable Ninth Circuit law, a plaintiff "prevails" when he or she
enters into a legally enforceable settlement agreement against the defendant");
Camarillo v. City of Maywood, No. CV 07-03469-AB (SHX), 2017 WL 11648960,
at *2 (C.D. Cal. July 31, 2017) ("a plaintiff who achieves a favorable settlement can
a prevailing party even in the absence of a judgment or verdict").

1 *Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011)); *Sobel v. Hertz Corp.*, 53 F. Supp. 3d 1319,
2 1325-26 (D. Nev. 2014) (concluding that “the lodestar method is the appropriate method for
3 calculating fees” under fee-shifting statutes and citing California and Ninth Circuit authorities).

4 Class Counsel’s motion for attorney’s fees will detail the significant hours and work
5 counsel undertook to litigate this case on a contingent basis for nearly a decade, without any
6 assurance of victory and with the singular focus of maximizing the recovery for class members.
7 Class Counsel’s prosecution of this case was vigorously opposed by experienced and skilled
8 attorneys representing Defendants zealously throughout the litigation. Through perseverance
9 against well-funded adversaries, Class Counsel was able to achieve an exceptional settlement for
10 class members which provides for payments that exceed the amount of the markup at issue in the
11 case. In short, Class Counsel’s attorney fee request will seek fair and reasonable compensation
12 for their time and effort, which resulted in substantial benefits being made available to hundreds
13 of thousands of class members.

14 **IV. Whether Any Part of the Settlement Amount Will Revert to Defendants**

15 As described above, the parties’ proposed Settlement Agreement requires Ocwen to pay
16 *unlimited* claims by class members for BPO and Hybrid fees assessed and paid, *without any cap*

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1 ***on the total amount paid to each class member.*** As such, no portion of the settlement sums will
2 “revert” to Defendants.

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5 Dated: March 8, 2024

Respectfully submitted,

6 */s/Roland Tellis*

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CERTIFICATE OF SERVICE

I hereby certify that, on March 8, 2024, service of this document was accomplished pursuant to the Court’s electronic filing procedures by filing this document through the ECF system.

/s/ Roland Tellis
Roland Tellis